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(K-C No. 17,448)
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Remarks

Applicants herein amend claims 1 and 15. Upon entry of this amendment, claims 1-22 will remain pending.

Applicants are filing this paper without any interview with the Examiner to discuss the application, as was suggested by the Examiner in telephone conversation with the undersigned on February 2, 2004. Entry of this amendment is appropriate under 37 C.F.R. §1.116 because it places the application in form for allowance, or alternatively in better form for appeal. MPEP § 714.12.

I. Request For Withdrawal of Finality of Action

Pursuant to MPEP § 706.07(d), Applicants request withdrawal of the finality of the Office action. Applicants respectfully assert that the new grounds for rejection introduced in the Office action were not necessitated by Applicants' amendment.

A final rejection on a second office action is not proper if it includes a rejection based upon new grounds that are not necessitated by an amendment. In pertinent part MPEP §706.07(a) states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the

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claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c).....

In the present case, Examiner Angela Grayson issued a first Office action, dated April 3, 2003. That action included claim rejections under 35 USC § 112, and additional claim rejections under § 102 in view of U.S. Patent No. 6,075,178 (La Wilhelm). In response, Applicants filed Amendment A on June 25, 2003. The only amendments made to the claims were to address issues raised by the Examiner as to §112. No amendments were made to distinguish the cited art. The amendment was a clarifying amendment which did not change scope of the claims. New claims 17-22 were added in Amendment A, but each is in dependent form and could not necessitate new grounds for rejection.

With regard to independent claims 1 and 15, Applicants argued in Amendment A that the claims require a color gradation providing a coloration which varies in intensity of color from a higher intensity of color to a lower intensity of color. No claim limitations were added. The requirements for a gradation in color were in claims 1 and 15 as originally written. Thus, Applicants did not argue any limitation added by Amendment A.

The second (present) Office action of December 29, 2003 does not address the La Wilhelm reference nor Applicants'

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arguments. Instead, U.S. Pat. No. 6,297,424 (Olson et al) is newly cited, and the Examiner takes a position that Olson anticipates claims 1-22. Applicants have not previously had opportunity to present arguments pointing out that Olson fails to show the requirements recited in the claims.

Accordingly, the new grounds for rejection in the Office action of December 29, 2003, based on newly cited art, were not necessitated by Applicants' amendment. In view of the foregoing, Applicants respectfully request that the Office action be re-classified as non-final.

II. Response to Rejections under 35 USC § 102

Applicants have invented a unique absorbent article for a child having an aesthetic appearance which facilitates an easier toilet training process. A key feature is a graduated coloration which permits both: 1) a moderately darker color on front and/or back sides which encourages the child to wear the article because it more closely resemblances garments worn by older children and adults, and 2) a visible element such as an active graphic which changes its degree of visibility when exposed to liquid as a tool for motivating the child to use the toilet. The coloration also masks features not intended to be seen, such as underlying anatomical features or bodily exudates. The visible element remains on a lightly colored or white

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background in order to maintain a visible appearance which will not be obscured by more intense coloration.

Independent claims 1 and 15 are herein amended to clarify distinctions relative to the prior art.

A. Claims 1-14 and 19-22

Claim 1 is directed to a disposable absorbent article having a gradation in color intensity. As amended, claim 1 recites a color gradation providing a coloration which varies in intensity from a higher intensity of color to a lower intensity of color, said gradation defining a gradual progression through successive stages of intensity of coloration, and a visible element at a location where the coloration is of lower intensity or absent such that the element remains visible and is not obscured by the color gradation.

Neither Olson nor any other reference of record shows every element of claim 1. Olson describes an absorbent article, such as a training pant, which is configured to provide an indication of wetness. The article includes a permanent character graphic (70), e.g., a dog, and several active object graphics (78), e.g., fish. Upon contact with urine, the active graphics either appear, disappear, or change to a brighter or darker color, thereby indicating wetness. The outer cover of the article has a white appearance (Column 9, lines 35-42). The

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cover includes a simulated elastic waistband (80), a simulated fly opening (82), and simulated elastic leg bands (84).

Olson fails to show or suggest a "color gradation," as its outer cover is mono-color in appearance. Applicants respectfully disagree with the statement in the Office action that one of Olson's fish (78) provides a coloration which varies in intensity from a higher intensity of color to a lower intensity of color. Olson has no suggestion that a portion of one fish could have a different appearance than another portion of that same fish to thereby present a gradation in color internal to one fish. Moreover, if a first fish is wet and a second, adjacent fish is dry, there is no gradation. Although the two fish will have two different colors or appearances, that is not a variation defining a gradual progression through successive stages of intensity of coloration, as recited in claim 1. Further, the fish are spaced from one another and colors are separated by sharp edges defined by lines of print at outer perimeters of each fish. Such a spaced and defined pattern is not a gradual progression.

It also bears emphasis that neither Olson nor any other cited reference recognizes the problem solved by applicants' disclosure, specifically, providing a color gradation which varies in intensity so that selected areas of an article have a higher color intensity to create certain visual effects and other areas of the article have a lower color intensity (or no color)

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to allow an element such as an active graphic to be seen and not obscured by the color of higher-intensity.

Since the invention disclosed in Olson neither discloses nor suggests the article recited in claim 1, the Section 102 rejection is improper. Accordingly, applicants request that the rejection be withdrawn.

Claims 2-14 and 19-22, which depend directly or indirectly from claim 1, are patentable for the same reasons as claim 1. Accordingly, applicants respectfully request that the rejections be withdrawn. Moreover, some of these claims recite additional features which distinguish the prior art. Claim 8 requires that coloration changes from higher intensity to lower intensity generally in the direction of the crotch region, and claim 9 recites that coloration changes from higher intensity to lower intensity generally in the direction of one or more sides of the pant. Applicants respectfully assert that the statement in the Office action that Olson discloses such directional changes in coloration is incorrect. Besides not showing any gradation in color, Olson has no suggestion of a directional orientation to any coloration scheme. Claim 19 requires that the color gradation is printed in the visible area of the article, and claim 20 further requires that it be printed with a permanent ink. In contrast, Olson's active graphic fish (78), which the Examiner has equated with a gradation, is formed from an ink which fades or disappears when exposed to liquid. Claim 21

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specifies that the color gradation appears regardless of whether the area is wet or dry, whereas Olson's fish appears or disappears between wet and dry states. Thus, for these additional reasons, the rejections of these claims should be withdrawn.

B. Claims 15-18

Claim 15 is directed to a disposable absorbent pant. As amended, claim 15 recites, among other elements, a color gradation providing a coloration which varies from a higher intensity of color in the vicinity of a waist region to a lower intensity of color toward a crotch region, said gradation defining a gradual progression through successive stages of intensity of coloration.

Neither Olson nor any other reference of record shows every element of claim 15. As discussed above, Olson fails to show a color gradation. Moreover, Olson fails to show a higher intensity of color in the vicinity of a waist region and lower intensity of color toward a crotch region. Since the invention disclosed in Olson neither discloses nor suggests the disposable absorbent pant recited in claim 15, the Section 102 rejection is improper. Accordingly, applicants request that the rejection be withdrawn.

Claims 16-18, which each depend from claim 15, are patentable for the same reasons as claim 15. Accordingly,

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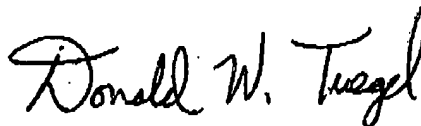
applicants respectfully request that the rejections of claims 16-18 be withdrawn. With respect to claim 18, it requires that the color gradation appears regardless of whether the area is wet or dry, whereas Olson's fish appears or disappears between wet and dry states. Thus, for this additional reason, the rejection of claim 18 should be withdrawn.

III. Conclusion

As it is believed that the application is in condition for allowance, a notice of allowance is respectfully requested.

Applicants believe no fees are associated with this Amendment. However, if the Commissioner determines that a fee is due, he is authorized to charge Deposit Account No. 19-1345.

Respectfully submitted,



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